CASE SUMMARY

Complaint against the Housing Department for: (a) cancelling the complainant's application for special transfer without giving her prior written notice and clearly explaining to her the reasons for the cancellation; and (b) misleading her into believing that she would be given three offers of public rental flat allocation.

The Complaint

The complainant is a public housing tenant. In February 1998, she lodged an application for special transfer with an estate office for the sake of her son's health and in the hope of moving to a larger and better-ventilated flat on the upper floor of a public rental housing block in an estate in the 'non-urban' district. In September of the same year, she received the first offer letter from the Housing Department (HD). As the flat allocated to her was on the lower floor and far away from the schools of her children, she refused to accept the offer. She alleged that the staff of the HD had told her that she would be given three offers. If she rejected all the offers, her application would be cancelled. Thus, she requested the staff of the estate office of the housing estate in which she was living to let her change her preference from a flat in a housing estate in the 'non-urban' area to one in the urban area to facilitate her children in their travel to school. In November of the same year, she received the second offer letter together with a notification (H.D.339) from the HD, which stated that if she declined the offer, she would have to wait for quite a long time before she would be given another offer. The complainant refused to accept the second offer on the ground that the flat was not located in the district of her choice and that it was not well-ventilated. In March 1999, she met a staff member of the estate office at the lobby of the public rental housing block in which she was living and learnt that her application had been cancelled. So she went to the estate office to seek an explanation. She felt aggrieved that the HD had cancelled her application without giving her prior written notice and clearly explaining to her the reasons for the cancellation. She opined that the allocation policy of the HD was unreasonable and that the notification (H.D. 339) issued to her together with the second offer letter had misled her into thinking that she would still be given one more offer. Hence, she lodged a complaint with this Office.

Information Provided by the Housing Department

2. Under the current policy of the HD, if a tenant can no longer live in his flat for health reasons or other livelihood problems, the HD may arrange a special transfer for him at its discretion. To ensure optimal use of public

housing resources, the staff of the HD will consider the reasons furnished by tenants and the urgency of individual cases when they process applications for special transfer and make recommendations prudently. In order to prevent tenants from abusing the special transfer arrangement, the HD staff are duty bound to review their applications to see if there is a need to arrange special transfer for them when they refuse to accept the offer of flats in the districts of their choice without good reasons. The HD has no special guidelines to require its staff to inform applicants in writing of the results of their applications for special transfer when they process such applications.

3. The complainant said she made an application for transfer to a larger flat in February 1998 for the sake of her son's health. The HD did not consider this a valid reason. However, as the overall air quality in the housing estate where she was living was relatively poor and the staff of the estate office sympathised with her son who was suffering from chronic ailment, they said that they could recommend her to apply for transfer to a housing estate in the 'non-urban' area where the air quality is comparatively better. With her consent, the HD staff helped the complainant complete the application form and explained to her that her application was classified as application for special transfer, and it would be cancelled if she turned down the offer of the HD without a good reason. After the complainant rejected the first offer and requested to change her preference from a flat in a housing estate in the 'non-urban' district to one in the urban area, the estate office staff did verbally explain to her at the very beginning the grounds on which they recommended her to move to a better-ventilated housing estate in the 'non-urban' district and told her that her request to be transferred to an estate in the urban area would be refused. Since the flat provided to her upon the first offer was on the lower floor and there were not enough windows in the living room, the estate office requested the Lettings Unit to allocate to her a better-ventilated flat on the upper floor in the district chosen by her previously. Upon receipt of a copy of the second offer letter, the estate office staff contacted the complainant and advised her to cherish the chance. She was also told about the consequence if she turned down the offer again without good reasons. Nevertheless, she declined the offer once again on the ground of poor transport facilities. Finally, the Lettings Unit decided to cancel her application after consulting the estate office. In February 1999, the estate office was formally notified of the decision.

4. The HD pointed out that, in this case, the Department had already approved the complainant's application for transfer to an estate in the 'non-urban' area. Moreover, vacant flats were not unavailable in the district of her choice. The HD accepted her application in the first place because the Department wished to help her solve the health problem of her son and she had stated in the application for special transfer that her choice was an estate in the 'non-urban' district. In the course of allocation, the HD staff had interviewed the complainant and explained to her that her reasons of refusal of the offer were inadequate and thus, her request would not be granted and no arrangement would be made for her to transfer to an estate in the urban area. The HD staff also advised her to take the second offer, or else, her application would be cancelled. Therefore, it was not true that no clear explanation had been given to her by the HD on the cancellation of her application as she had alleged.

5. The HD does not have a policy which strictly governs the number of offers given to successful applicants for special transfer. However, to ensure optimal use of public housing resources and prevent applicants from abusing the special transfer arrangements, the HD will send the applications back to the estate office concerned for review so as to ascertain the need to arrange special transfer for the applicants when they reject the offer of flats in the district of their choice without good reasons or when they request for

particular flats, flats on particular floors or flats in particular estates.

6. The complainant alleged that the estate office staff misled her into believing that the HD would give her three offers. In response, the Department said that normally, the estate office staff would not tell the applicant that three offers would be given to them when they were given the first offer. In order to shorten the vacancy period for public housing flats, the HD would allocate vacant flats under refurbishment before the refurbishing works are finished. Hence, the notification (H.D. 339) is issued for the purpose of reminding the applicants who have been allocated such flats to consider the offer carefully and advising them to accept it as far as possible. It does not serve to guarantee further offers. If they refuse to accept the offer, they may have to wait for a longer period of time for the next offer. Whether or not the applicant would get another offer depends on the result of the review conducted under the policy mentioned in paragraph 5 above. The HD had issued a reply to the complainant in May last year to explain this point. The Department admitted that some phrases and sentences in the notification had been revised to avoid misunderstanding by other applicants.

Observations and Conclusions

Complaint Point (a)

7. Having examined the information and files provided by the HD as well as the current policy and procedures of processing applications for special transfer, this office is satisfied that the HD had not notified the complainant in writing before cancelling her application for special transfer. However, the HD staff had, when they helped the complainant complete the application form, after she had rejected the first offer and when she received the notification of the second offer, verbally explained to her the grounds on which they recommend her to move to the ‘non-urban’ area and made it clear that the HD would neither accede to her request nor make arrangements for her to move to an estate in the urban area. In view of the inadequate reasons put forth by her in declining the first offer, the HD had asked her to cherish the second chance, or else her application would be cancelled. Furthermore, as mentioned in paragraph 1 above, the complainant had requested the HD staff to let her change her preferred district. This indicated that to some extent, she was aware of the status of her application for special transfer. At present, the HD has no guidelines to require its staff to notify applicants in writing of the results of their applications for special transfer and reasons for their cancellation. Yet we are of the view that if HD can add a note in the application form for special transfer, stating that the application will be cancelled if the reasons for refusing an offer are not the same as the grounds on which the application was lodged and for which the HD has recommended special transfer, the applicant would have a better understanding of his rights and obligations. Moreover, if the Department could issue a written notice to the applicant upon cancellation of his application to give him a clear picture of the circumstances concerned, it would help to reduce the chance of misunderstanding and dispute. Having considered the above circumstances,

this Office concludes that complaint point (a) is **partially substantiated**.

Complaint Point (b)

8. Having examined the information and files provided by the HD, this Office is of the view that there was no substantive evidence to support the complainant’s allegation that the estate office staff had told her the HD would give her three offers when she declined the first one. However, it is stated in paragraph 4 of the notification (H.D. 339) attached to the second offer letter issued to the complainant that “Owing to problems arising from the supply and demand of vacant flats, you may have to wait for a rather long period of time before you will be given the next offer”. As a matter of fact, the wording is ambiguous and it is likely that the complainant thus thought she would be given a third offer. Nevertheless, as the complainant was, to some extent, aware of the status of her special transfer application and the HD has revised the notification (H.D. 339) by deleting paragraph 4 therein which contains the abovementioned sentence to avoid misunderstanding and dispute by other applicants, this Office concludes that complaint point (b) is **partially substantiated**.

9. All points considered, The Ombudsman concludes that this complaint is **partially substantiated**.

Recommendations

10. This office is pleased to note that the HD has revised the notification (H.D. 339) to avoid misunderstanding by applicants that they will be given another offer of allocation of public rental flats. The Ombudsman has also made the following two recommendations to the Director of Housing with a view to further improve the quality of service of the Department:

(a) with regard to the processing of applications for special transfer, to consider adding a note in the application form for special transfer to state the circumstances under which applications would be cancelled; and

(b) to consider stating in the departmental instructions that a written notice should be sent to the applicants to explain to them the reasons for cancelling their applications.

Response from the Director of Housing

11. The Director of Housing has accepted our views in this report. The Department's response to the two recommendations in paragraph 10 above is as follows:

(a) Regarding the processing of applications for special transfer, the Lettings Unit will revise Part IV of the application form for special transfer so as to remind applicants that their application may be cancelled and incorporate other departmental guidelines.

(b) Though the Department has no special guidelines specifying that a letter explaining the reasons should be sent to the applicant on cancellation of his application, it is the Department's current and normal practice to reply to tenants in writing upon receipt of their requests/applications. Hence, the Department will not issue specific guidelines for the processing of special transfer applications. However, the HD has reminded its staff to pay special attention to similar cases in future and notify applicants in writing of the reasons for cancelling their applications.

Conclusion

12. The Ombudsman is pleased to note that the HD has responded positively to this complaint and taken appropriate measures to improve the quality of its service.

Office of the Ombudsman
Case ref.: OMB 1999/1119
February 2000

Annex C

CASE SUMMARY

Complaint against the former Agriculture and Fisheries Department and the Lands Department for evading responsibility and delaying action on a tree which posed danger to passers-by.

The Complaint

The complainant lodged a complaint against the former Agriculture and Fisheries Department (AFD) and the Lands Department (Lands D) for evading responsibility to fell a tree in a village in the New Territories which posed danger to passers-by.

2. The complainant wrote to District Office/Tai Po (DO/TP) in December 1998 requesting assistance to fell a dead tree which was about forty feet in height as well as another tree in similar conditions in the vicinity. DO/TP then referred his request to AFD for follow-up action. However, the subject tree was assessed by AFD as posing no immediate danger and the case was referred to District Lands Office/Tai Po (DLO/TP) for action. In April last year, the complainant further complained that some branches of the tree had fallen down onto the footpath, posing severe danger to passers-by. Nevertheless, AFD maintained that the subject tree posed no immediate danger and that the maintenance of the tree did not fall within its ambit. Feeling aggrieved that AFD had shirked its responsibility, he complained to The Ombudsman.

Observations and Comments

3. With the consent of the complainant, this Office referred his complaint to AFD for direct action under the Internal Complaints Handling Scheme at first. An exchange of correspondences and arguments had since ensued between AFD and DLO/TP on the question of responsibility but no action was taken to fell the subject tree.

4. In July last year, an investigation officer of this Office conducted a site inspection and noted that the subject tree stood near a slope on a footpath in the village and it appeared to be dead. A pile of bulky branches was also found on the side of the footpath. This Office thus decided to conduct an investigation into the complaint. As the matter also involved Lands D, the complainant consented to include Lands D as a complainee department. This Office also requested the former Planning, Environment and Lands Bureau (PELB) to give its comments on the matter.

5. AFD was the authority for assessing if a tree posed immediate or potential danger and deciding whether it should be felled. AFD explained that

according to Group (e) of Appendix I of PELB Technical Circular No. 3/94 (the Circular), the Director of Agriculture and Fisheries "does not maintain vegetation/trees on unallocated Government land". Where maintenance of vegetation/trees on such land was required and the responsibility did not rest with other departments or public utility companies, DLOs might undertake the maintenance work with funds from the Government Land Maintenance Vote.

6. AFD replied to the complainant on 19 May 1999 advising him that DLO/TP had agreed to assume responsibility for his request for tree felling. This Office however noted that what DLO/TP was in fact suggesting was that the tree was posing immediate danger to passers-by and therefore AFD should be responsible for its felling. AFD had obviously misled the complainant on the question of responsibility.

7. On the other hand, though the subject tree was assessed by AFD as posing no immediate danger in April last year, its branches had continued to fall down. According to AFD, the falling of branches was a natural phenomenon of all trees, even healthy trees. However, observations made by our investigation officer in the site inspection revealed that some fallen branches found piling along the footpath measured about 15 centimetres in diameter.

8. The delineation of responsibility over tree maintenance and tree felling on unleased and unallocated Government land had always been a matter of dispute between the two departments concerned. This Office was of the view that AFD played an important role in the overall maintenance of vegetation/trees. In case of doubt, it should seek clarification on the relevant sections of the Circular from PELB immediately so that the problem could be solved as early as possible. However, AFD had not done so. This omission had contributed to the delay in resolving the present complaint and other similar complaints. The complaint against AFD was therefore **substantiated**.

9. On the question of responsibility for the felling of the subject tree, Lands D commented that the Circular only stipulated that DLOs might undertake tree trimming where warranted but it made no reference to tree felling. Lands D further commented that their term contractors had little or no expertise in tree maintenance generally, let alone tree felling which was specialist work. In the present case, the Landscaping Division of Lands D would ask its landscape contractor to fell the subject tree and another tree in similar conditions. Lands D pointed out that this was a one-off exercise under a special arrangement.

10. According to Lands D, the present case was not unique. As a matter of fact, it highlighted a wholly unsatisfactory arrangement for the maintenance and, if necessary, the felling of trees on unleased and unallocated Government land. Lands D intended to bid for funds to employ a specialist term contractor and a landscape architect to do the job. Lands D suggested that it would be helpful, as an interim measure, for AFD to provide expert advice and assistance as necessary until it was in a position to undertake the task properly.

11. This Office was of the view that both AFD and Lands D should have acted earlier to seek clarification from PELB on the grey areas of the Circular. Lands D had not taken earlier action to clarify the question of inter-departmental responsibility and had consequently caused delay to the resolution of the present complaint and other similar complaints. The complaint against Lands D was therefore **substantiated**.

12. According to PELB, the Circular specified that AFD was the authority to fell trees on unleased Government land but where warranted, DLOs might undertake trimming and other vegetation maintenance. In the context of the present complaint case, apparently AFD and Lands D had different interpretations of "authority for tree felling" and "maintenance responsibility" as set out in the Circular. PELB admitted that grey areas in the Circular had resulted in buck-passing by the two departments. PELB agreed to review the Circular in consultation with the departments concerned with a view to establishing a clearer delineation of the responsibility among them. In the interest of public safety, PELB had asked Lands D to fell the two trees on 7 September 1999.

13. Overall, The Ombudsman concluded that there was delay in the action taken by AFD and Lands D in response to the request made by the complainant and both departments had no consideration for the complainant himself as well as other persons who might have been affected by such action. Therefore, this complaint was **substantiated**. This complaint had brought to light a long running dispute over the delineation of departmental responsibility between AFD and Lands D. The Ombudsman considered that it would be desirable for Lands D to formulate some agency arrangements with AFD and the former Urban Services Department and/or the former Regional Services Department so that it could fund the undertaking of tree maintenance work on unleased Government land by these departments on a contractual basis. The Ombudsman recommended that -

(a) AFD and Lands D should involve the relevant policy Bureau to review and resolve the question of delineation of responsibility for tree felling, maintenance and other related issues;

(b) this Office be informed of the results of the review; and

(c) prior to completion of the review, interim measures should be adopted to address similar outstanding complaints.

Comments from AFD, Lands D and PELB

14. AFD asserted that in accordance with the delineation of responsibilities in the Circular, the trees in question were within DLO/TP's responsibility. It did not agree that there were grey areas in the Circular. As regards PELB's admission of the existence of grey areas in the Circular, AFD remarked that this was contrary to the advice previously given by PELB in its memo dated 12 September 1996. AFD accepted the recommendations of The

Ombudsman with the proviso that the expert advice and assistance suggested by Lands D should be restricted to the amenity/ecological value of the trees and to whether the trees posed immediate danger.

15. Lands D expressed reservations on this Office’s substantiated finding against it. It opined that with public safety at stake, the department with the appropriate expertise should take action to ensure public safety. It also pointed out that DLO/TP had tried but failed to convince AFD of the potential danger posed by the trees. Lands D did not support the suggestion of hiring the professional service of other departments on a contractual basis to undertake tree maintenance work on unleased Government land. Nevertheless, it would further explore options to deal with the issue. The three recommendations made by The Ombudsman were accepted by Lands D.

16. In respect of the remarks made by AFD in para. 14 above, PELB explained that the memo aimed to clarify the authority for approving the felling of trees and the way to apply for such approval, but did not elaborate on the responsibility for “maintenance of trees”. PELB reiterated that the grey areas in the Circular were on “maintenance of trees” and “tree felling responsibility”. The present case confirmed that AFD and Lands D might have different interpretations of the delineation of responsibility. PELB intended to solicit the views of the departments concerned on the review of the Circular and hoped to remove any grey areas concerning the delineation of authority.

Final Remarks

17. The Ombudsman had carefully studied the comments from AFD, Lands D and PELB. At present, many requests for tree maintenance lodged with DLOs were still awaiting action. This clearly illustrated the unsatisfactory performance of the departments concerned on this aspect of work. Furthermore, the ten months' delay in the present case could not be justified. The Ombudsman therefore saw no strong grounds to change the "substantiated" conclusion reached in the investigation report.

Office of The Ombudsman
Case ref.: OMB 1999/1079 & 2383
February 2000